IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE CIVIL JURISDICTION

Writ Petition No.3545 of l993

Namdeo Gangaram Mahale.. petitioner

vs

Shri S H Patil and ors... respondents

with

Writ Petition No.3686 of l993

Namdeo Gangaram Mahale.. petitioner

vs

S.H.Patil and ors... respondents

with

Writ Petition No.3687 of l993

Balasaheb Eknath Khandve.. petitioner

vs

Shri S H Patil and ors... respondents

with

Writ Petition No.3698 of l993

T.R.More .. petitioner

vs

Shri S H Patil and ors... respondents

with

Writ Petition No.3690 of l993

P.D.Sahare.. petitioner

vs

Shri S H Patil and ors... respondents

with

Writ Petition No.3698 of l993

D.M.Gaikwad.. petitioner

vs

Shri S H Patil and ors... respondents

with

Writ Petition No.3699 of l993

H.D.Choudhari ...petitioner

vs

Shri S H Patil and ors... respondents

Shri C.J.Sawant senior counsel with Mr. S.P.Kanuga for petitioners

Mr.C.R.Sonawane AGP for respondents

CORAM: A.P.SHAH & D.Y.CHANDRACHUD JJ.

Dt 30.6.2005

P.C.

l. These petitions challenge the order passed by the Principal Secretary(Forests), Revenue and Forest Department dated 20.7.l993 directing cancellation of sale of trees in respect of l54 adivasi khatedars conducted by DCF (East) Nasik Division on 6.4.l993, in exercise of power under section 7(7A) of the Maharashtra Sale of Trees by Occupants belonging to Scheduled Tribes (Regulations) Act, l969, hereinafter referred to as ‘the said Act’.

2. One Pradeep V Pawar a resident of Nasik complained to Government on 4.5.l993 that trees valued at Rs. 2 crores have been sold for Rs 20 lacs only and wide publicity to the sale ought to have been given. It was alleged therein that this has been done by the forest officers with collusion with the contractors and he requested for inquiry into the matter so that the adivasis would get just price for the trees in accordance with the provisions of the said Act. The inquiry was conducted through the DCF(Conservator) Maharashtra State,Nagpur and it was found that various irregularities were committed in conducting the sale of trees. The Principal Secretary in the impugned order observed:

> In the instant case all l54 khatedars approached DCF East Nasik Division in September l992 for seeking assistance and none of the application was in prescribed form nor accompanied with permission from Tree Officer for felling of trees. In the application it is mentioned that sale of standing trees as per sub-section 6(4) be done

because disposal of trees through Forests Department as per sub-section 6(3) results in delayed payment to adivasis and in support thereof Bombay High Court judgement dated 5.8.l992 in Writ Petition no. 2562 of l992 is cited. It is noteworthy to mention here that all applications are identically worded and lodged within a period of one week or so with DCF, East Nasik Dn.quoting judgment of Bombay High Court while seeking assistance for disposal of standing trees. The documentary evidence suggests that interested parties must have been behind this unusual request of l54 adivasis relying on High Court judgment DCF East Nasik Dn acted mechanically while deciding that disposal of standing trees as per sub-section 6(4) be done in all l54 cases and reasons therefor as per sub-section 6(2) of the Act of l969 were not recorded. There is no question of deemed permission for felling of trees on expiry of period of 90 days from the date of application

because the competent authority to grant permission for felling of scheduled trees under the Act of l964 is Tree Officer (Range Forest Officer) and not the DCF East Nasik Dn. Thus there is complete lack of application of mind by DCF East Nasik Dn while deciding that standing trees be sold as per sub-section 6(4) of the Act.

The directions vide Government Circular dated 22.7.l992 have statutory force as these are issued in pursuance of the provisions of sub-section 6(4) and 6(3) of the Act of l969. These directions lay down the procedure for estimation of yield of standing trees and in situ valuation of these trees by drawing a panchanama in the presence of Adivasi Khatedar as well as two witnesses and project officer ITDP concerned and it is not an idle formality. The basic objective of these directions is to ensure that yield estimation from trees is done on a realistic basis so that in situ valuation of trees is done

properly. The estimated yield is determined by local field staff for each l54 khatedar and it is reduced by Shri Darade, ACF without assigning reasons for the same.

The mere fact that Shri Darade ACF is an experienced officer does not mean that instructions contained in the guidelines be flouted. Even occular estimation of yield in the absence of form factor for different tree species has to be done on a realistic basis and not arbitrarily. In case the yield estimated by local staff was to be varied then reasons for the same should have been recorded by Shri Darade ACF and DCF East Nasik Dn who accepted the same. Because of the arbitrary reduction of estimated yield, the upset price came to be fixed on a lower side. The sale price received in all l54 cases is marginally higher than the upset price and it is obvious that arbitrary fixation of estimated yield resulted in less realisation of value

for trees of adivasi khatedar in the sale held on 6.4.l993. The statement of Shri Kanuga, Advocate that price received per tree in the auction held on 6.4.l993 is much higher compared to earlier sales conducted by Forest Department cannot be accepted on its face value because it depends on size of trees, accessibility of area and so many other factors. If the argument of Shri Kanuga is accepted then it will make the provisions of Act of l969 and Rules/guidelines issued thereunder otiose".

3. In the light of the above finding the Principal Secretary held that the DCF(East) Nasik Division committed error in directing sale of the standing trees under section 6(4) of the Act and arbitrary estimation of yield of timber/fire wood in each case resulted in lower estimation of in-situ valuation of trees. Therefore the sale of sanding trees in respect of the said l54 adivasi khatedars conducted by the DCF on 6.4.l993 was cancelled and reauction of timber and fire wood

was directed under the supervision of Conservator of Forests Nasik Circle after giving due publicity to the sale. It was further directed that on resale, if the erstwhile purchaser has incurred expenditure on felling the trees/ transport of the material to depot, the estimation of the same would be done by the CF Nasik Circle and thereafter same could be paid back to the purchasers out of the sale proceeds to be received on reauction of the material.

4. The petitions were admitted on 30.9.l993 and the petitioners were permitted to remove the timber/ fire wood subject to furnishing security in various amounts towards the differential amount of auction sale price and the market value determined by Asst Conservator of Forest.

5. Shri C.J.Sawant, learned counsel appearing for the petitioners has not challenged the finding recorded by the Principal Secretary that the sale suffers from various illegalities. Shri Sawant, however, contended that exploitation of trees would require substantial expenditure to be incurred for felling, conversion, extraction and transport.He submitted that after auction sale the

work of felling of trees and converting and fashioning them into logs of timber and firewood was done by the petitioners at a considerable expenses by incurring substantial expenditure and this amount has not been taken into consideration by the Asst Conservator while determining the value of the fallen logs of timber an fire wood. This position is also accepted by the Asst Conservator in his affidavit dated 28.6.2005. Considering the amount of expenses incurred by each of the petitioners for felling, conversion, extraction and transport of the trees and logs we feel that the end of justice would be served if the petitioners are directed to pay the differential amount as follows;

Sr no	name of purchaser	amount payable
l.	Namdeo Gangaram Mahale	Rs.28,000
2.	Ganpat Laxman Chaudhari	Rs.49,000
3.	S.K.Khandve	Rs.4,90,000
4.	P.D.Sahare	Rs.84,000
5.	R.T.More	Rs.9l,000
6.	Dharma Mahadu Gaikwad	Rs.56,000
7.	Hiragi Devaji Chaudhari	Rs.42,000

6. The petitioners through their counsel Shri Sawant undertake to deposit the about amounts with the Asst Conservator of Forests within two months from today. After the amount is deposited same shall be disbursed amongst the concerned adivasi khatedars proportionately.

Petitions stand disposed of accordingly.